

1 Scott P. Jang (State Bar No. 260191)
Andrew J. Kozlow (State Bar No. 252295)
2 Spencer C. Ladd (State Bar No. 340905)
JACKSON LEWIS P.C.
3 50 California Street, 9th Floor
San Francisco, California 94111-4615
4 Telephone: (415) 394-9400
Facsimile: (415) 394-9401
5 E-mail: Scott.Jang@jacksonlewis.com
E-mail: Spencer.Ladd@jacksonlewis.com
6 E-mail: Andrew.Kozlow@jacksonlewis.com

7 Attorneys for Defendants
ECCO RETAIL, LLC; ECCO USA, INC.
8 AND ECCO

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 WILLIAM M. AMORT, individually and on
13 behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 ECCO RETAIL, LLC; ECCO USA, INC.;
17 ECCO; and DOES 1 through 20, inclusive,

18 Defendants.
19
20

Case No.

**DEFENDANTS' NOTICE OF
REMOVAL**

(Filed concurrently with Civil Case Cover
Sheet, Notice of Interested Parties, Corporate
Disclosure Statement, Declaration of Cheryl
Garrison in Support of Removal, and
Declaration of Stacy Holtzclaw in Support of
Removal)

State Complaint Filed: 07/27/2022

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22 TO THE HONORABLE CLERK OF THE UNITED STATES DISTRICT COURT FOR
23 THE NORTHERN DISTRICT OF CALIFORNIA:

24 PLEASE TAKE NOTICE that Defendants ECCO RETAIL, LLC, ECCO USA, INC., and
25 ECCO ("Defendants") invoke this Court's jurisdiction under 28 U.S.C. § 1332 and, pursuant to
26 28 U.S.C. § 1441, remove the above-entitled action to this Court from the Superior Court of the
27 State of California in and for the County of San Mateo, Case No. 22-CIV-03050 ("San Mateo
28 Superior Court"). While Defendants adamantly dispute that Plaintiff William M. Amort

1 (“Plaintiff”) or any of the individuals whom he seeks to represent in this action are entitled to
 2 any recovery, Plaintiff’s allegations in the Complaint reveal that he has placed in controversy a
 3 case that is within the jurisdiction of this Court.

4 PLEADINGS

5 1. On July 27, 2022, Plaintiff filed a civil action against Defendants in San Mateo
 6 Superior Court, Case No. 22-CIV-03050. The Complaint sets forth nine putative class-wide
 7 causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3)
 8 Failure to Provide Meal Periods; (4) Failure to Permit Rest Breaks; and (5) Failure to Reimburse
 9 Business Expenses; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to
 10 Pay Wages During Employment; (8) Failure to Pay all Wages Due Upon Separation of
 11 Employment; and (9) Violation of Business and Professions Code §§ 17200, *et seq.*

12 2. Plaintiff served the Summons and Complaint and related court documents in
 13 this action via Notice of Acknowledgment on August 17, 2022, and Defendants returned the
 14 signed Acknowledgement of Receipt on September 6, 2022. A copy of the Summons,
 15 Complaint, other related court documents, and the signed Acknowledgement of Receipt is
 16 attached as **Exhibit A**.

17 JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT

18 3. Pursuant to Section 4 of the Class Action Fairness Act (“CAFA”), 28 U.S.C. §
 19 1332(d)(2) has been amended to provide, in relevant part:

20 The district courts shall have original jurisdiction of any civil action
 21 in which the matter in controversy exceeds the sum or value of
 22 \$5,000,000, exclusive of interest and costs, and is a class action in
 which – (A) any member of a class of plaintiffs is a citizen of a State
 different from any defendant

23 4. In addition, CAFA confers federal court jurisdiction only where the proposed
 24 class involves 100 or more members, or where the primary defendants are not States, State
 25 officials, or other governmental entities. 28 U.S.C. § 1332(d)(5).

26 5. As set forth below, this action satisfies all the requirements for federal jurisdiction
 27 under CAFA. This action (1) involves a plaintiff and defendants who are citizens of different
 28 states; (2) involves a putative class of 100 or more purported members; (3) involves a

1 controversy that purportedly exceeds the sum or value of \$5,000,000; and (4) does not involve a
2 defendant who is a governmental official or entity

3 Plaintiffs and Defendants Are Citizens of Different States

4 6. CAFA's diversity requirement is satisfied when any member of a class of
5 plaintiffs is a citizen of a state different from any defendant, when at least one member of a class
6 is a citizen of a foreign state and one defendant is a U.S. citizen, or when at least one member of
7 a class of plaintiffs is a U.S. citizen and one defendant is a citizen of a foreign state. 28 U.S.C. §
8 1332(d)(2).

9 7. A natural person's citizenship is determined by his state of "domicile." *Kanter v.*
10 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). "A person's domicile is [his] permanent
11 home, where [he] resides with the intention to remain or to which [he] intends to return." *Id.*
12 (citation omitted).

13 8. For diversity purposes, a corporation is a citizen of any state where it is
14 incorporated and of the state where it has its principal place of business. *See* 28 U.S.C. §
15 1332(c); *Hertz Corp v. Friend*, 559 U.S. 77, 92-93 (2010).

16 9. For diversity purposes, a limited liability company is deemed to be a citizen of
17 any state in which any member of the company is a citizen. *See Johnson v. Columbia Props.*
18 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

19 10. Diversity of citizenship is determined "as of the time the complaint is filed and
20 removal is effected." *Strotek Corp. v. Air Transp. Ass'n of America*, 300 F.3d 1129, 1131 (9th
21 Cir. 2002) (citations omitted).

22 11. Here, Plaintiff alleges that he is a citizen of the State of California: Plaintiff
23 alleges he resides in California. (Compl. ¶ 10).

24 12. Defendant ECCO USA, INC., ("Defendant ECCO USA") is incorporated in the
25 State of New Hampshire and has its principal place of business in the State of New Hampshire.
26 (Declaration of Cheryl Garrison in Support of Defendants' Notice of Removal ("Garrison
27 Decl.") ¶ 9.)

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13. Defendant ECCO RETAIL, LLC (“Defendant ECCO Retail”), is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business in the State of New Hampshire. Its sole member is Defendant ECCO USA, which as indicated above is incorporated in the State of New Hampshire and has a principal place of business in the State of New Hampshire. (Garrison Decl. ¶¶ 8-9.)

14. As for Defendant “ECCO,” there is no such entity and as such cannot be considered as a part of this analysis. (Garrison Decl. ¶ 10.)

15. Based on the above, the diversity requirement of CAFA removal is satisfied since Plaintiff is a citizen of the State of California, whereas Defendants are citizens of a different state.

The Putative Class Consists of More Than 100 Members

16. Under the Eighth Cause of Action, Plaintiff seeks waiting time penalties on behalf of Defendants’ employees who worked in California as a non-exempt employee and had their employment terminated between January 23, 2019, and the date of class certification. (Compl. ¶ 21.)

17. Based on a review of Defendant ECCO Retail’s payroll records, at least 100 of its employees worked as non-exempt employees in California and had their employment terminated during the time period of January 23, 2019 to July 27, 2022 (“Relevant Period”) (Declaration of Stacy Holtzclaw in Support of Defendants’ Notice of Removal (“Holtzclaw Decl.”) ¶ 9.)

18. Therefore, without even considering the putative class size of the larger subclasses that cover longer durations, this claim satisfies CAFA’s numerosity requirement.

The Purported Amount in Controversy Exceeds \$5,000,000

19. CAFA authorizes the removal of class actions in which the amount in controversy exceeds \$5,000,000. 28 U.S.C. §1332(d).

20. In *Dart Cherokee Basin Operating Company, LLC v. Owens*, 135 S. Ct. 547 (2014), the United States Supreme Court held that, where the complaint is silent as to whether the amount in controversy meets CAFA’s jurisdictional threshold of \$5,000,000, “a defendant’s notice of removal need include only a *plausible* allegation that the amount in controversy

1 exceeds the jurisdictional threshold.” *Id.* at 554 (emphasis added). For the following reasons, the
 2 Complaint places an amount in controversy exceeding \$5,000,000.

3 21. Although the Complaint is silent as to the amount in controversy, the amount in
 4 controversy exceeds \$5,000,000 based on the Second Cause of Action for alleged unpaid
 5 overtime, the Third Cause of Action for alleged noncompliant meal periods, the Fourth Cause of
 6 Action for alleged noncompliant rest breaks, the Sixth Cause of Action for alleged failure to
 7 provide accurate wage statements, the Eighth Cause of Action for alleged failure to pay
 8 compensation due upon discharge, and Plaintiff’s prayer for attorneys’ fees:

- 9 a. Under the Second Cause of Action, Plaintiff seeks alleged unpaid overtime
 10 wages on behalf of Defendants’ current and former employees who worked in
 11 California as a non-exempt employee during the period of January 23, 2018
 12 and the date of class certification. (*See* Compl. ¶¶ 20, 44-55.)
- 13 b. Plaintiff alleges that these putative class members were “required . . . to work
 14 in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a
 15 seventh consecutive day of work, entitling them to overtime wages.” (Compl.
 16 ¶ 51.)
- 17 c. Based on a review of Defendant ECCO Retail’s payroll records, Defendant
 18 ECCO Retail’s non-exempt employees in California (a) worked at least
 19 31,406 workweeks during the period of July 27, 2018 through July 27, 2022;
 20 and (b) had an average regular rate of pay of at least \$15.44 per hour during
 21 that time period. (Holtzclaw Decl.¶ 12.)
- 22 d. Therefore, assuming that each putative class member worked two hours of
 23 alleged unpaid overtime per workweek, the amount in controversy from this
 24 claim equals at least **\$1,454,725.92** (\$15.44 x 1.5 overtime rate x 2 overtime
 25 hours per week x 31,406 pay periods.)
- 26 e. Under the Third Cause of Action, Plaintiff seeks damages for alleged missed
 27 and/or noncompliant meal periods. (Compl. ¶¶ 56-64.) Pursuant to California
 28 Labor Code § 226.7, 512 and IWC Order No. 1-2001, § 11, an employee that

works five or more hours in a shift is entitled to one unpaid thirty-minute lunch period. An employer that fails to provide a compliant meal period is liable to the aggrieved employee for one hour of pay at the employee's regular rate.

- f. During the period of July 27, 2018 through July 27, 2022, ECCO Retail employees worked approximately 31,406 workweeks. (Holtzclaw Decl. ¶ 12.) Therefore, assuming two noncompliant meal periods per workweek results in an amount in controversy of **\$969,817.28** (31,406 workweeks x 2 meal periods per workweek x \$15.44).
- g. Under the Fourth Cause of Action, Plaintiff seeks damages for alleged missed and/or noncompliant rest breaks. (Compl. ¶¶ 65-71.) During the period of July 27, 2018 through July 27, 2022, ECCO Retail employees worked approximately 31,406 workweeks. (Holtzclaw Decl. ¶ 12.) Therefore, assuming two noncompliant rest breaks per workweek results in an amount in controversy of **\$969,817.28** (31,406 workweeks x 2 rest breaks per workweek x \$15.44).
- h. Under the Sixth Cause of Action, Plaintiff seeks statutory penalties for the alleged failure to provide accurate and itemized wage statements. (Compl. ¶¶ 82-84.) An employer that fails to furnish accurate wage statements is liable for the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) per employee. There were approximately 8,070 pay periods during the year prior to the filing of the Complaint to July 27, 2022. (Holtzclaw Decl. ¶ 14.) Therefore, the amount in controversy for this claim is approximately **\$807,000** (\$100 x 8,070).

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- i. Under the Eighth Cause of Action, Plaintiff seeks alleged waiting time penalties on behalf of Defendants' employees who worked as a non-exempt employee and had their employment terminated during the relevant time period. (Compl. ¶¶ 93-96.)
- j. Based on a review of Defendant ECCO Retail's payroll records, there were approximately 394 non-exempt employees in California that (a) were terminated during the time period of July 27, 2019, until July 27, 2022; and (b) had an average annual base salary of at least \$15.44 during that time period. (Holtzclaw Decl. ¶ 13.) Therefore, the potential waiting time penalties arising out of the claims for these putative class members equals **\$1,400,006.40** (\$15.44 per hour x 8 hours per day x 30 days x 394 putative class members). *See* Labor Code § 203 (imposing a statutory penalty equal to employee's daily rate of pay for each day the wages are improperly withheld, up to 30 days).
- ~~k.~~ Courts in the Northern District of California treat a 25% attorneys' fee award as reasonable in wage and hour putative class actions for determining amounts in controversy for CAFA removal purposes. *Anderson v. Starbucks Corp.*, No. 3:20-cv-01178-JD, 2020 U.S. Dist. LEXIS 245356, at *14 (N.D. Cal. Dec. 31, 2020).
- l. The sums above equal an amount in controversy of at least **\$7,001,708.60** $([\$1,454,725.92 + \$969,817.28 + \$969,817.28 + \$807,000 + \$1,400,006.40] \times 1.25)$.

22. Notably, the above calculations reach the jurisdictional threshold under CAFA even without including Plaintiff's other claims. Including Plaintiff's other claims for alleged failure to afford compliant meal periods, failure to provide compliant rest periods, failure to reimburse business expenses, and unfair business practices only further establish that this Court has jurisdiction over this putative class action under CAFA.

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23. For all these reasons, this action satisfies the amount in controversy requirement under CAFA.

Defendants Are Not a Governmental Official or Entity.

24. Defendants are not a state, a state official, or any other governmental entity.

VENUE

25. Venue properly lies in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1441(a). Section 1441(a) provides, in relevant part:

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

26. As indicated above, Plaintiffs brought this action in San Mateo Superior Court. The United States District Court for the Northern District of California encompasses this territory. 28 U.S.C. § 84(a).

TIMELINESS OF REMOVAL

27. This Notice of Removal is timely because this Notice of Removal is filed within thirty days after Defendants were served with papers from which it could first be ascertained that the case was removable. 28 U.S.C. § 1446(b).

NOTICE TO PLAINTIFFS AND STATE COURT

28. In accordance with 28 U.S.C. § 1446(d), Defendants' counsel certifies that a copy of this Notice of Removal and all supporting papers will be served on Plaintiff's counsel and filed with the Clerk of the San Mateo Superior Court. As such, all procedural requirements under § 1446 are satisfied.

CONSENT

29. All defendants consent to the removal of this action.

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CONCLUSION

30. For the reasons set forth above, Defendants maintain that this action is properly removed to this Court.

Dated: October 6, 2022

JACKSON LEWIS P.C.

By: /s/Scott P. Jang
Scott P. Jang
Andrew J. Kozlow
Spencer C. Ladd
Attorneys for Defendants
ECCO RETAIL, LLC, ECCO USA, INC.
AND ECCO

4882-0298-1175, v. 1